

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

ALI BAHAR

Plaintiff,

vs.

CITY OF CINCINNATI

Defendant.

: Case No. C-1-01-798  
: J. Watson  
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**FINAL  
JOINT PRETRIAL ORDER**

This matter is before the Court pursuant to Rule 16 of the Federal Rules of Civil Procedure.

**I. APPEARANCES:**

For Plaintiff: Kelly Mulloy Myers (0065698)  
Randolph H. Freking (0009158)  
Trial Attorneys for Plaintiff  
Freking & Betz  
215 E. Fifth Street, Fifth Floor  
Cincinnati, OH 45202  
(513) 721-1975/FAX: 651-2570

For Defendant: Augustine Giglio (0031911)  
Terry Nestor (0065840)  
Trial Attorneys for Defendant  
Assistant City Solicitor  
City Hall, Room 214  
Cincinnati, OH 45202  
(513) 352-3334/FAX: 352-1515

**II. NATURE OF ACTION AND JURISDICTION:**

- A. This is an action for alleged unlawful discrimination based upon national origin pursuant to Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C. § 2000 et seq. and Ohio Revised Code § 4112; retaliation under Title VII and O.R.C. § 4112; and violation of Ohio Public Policy.
- B. The jurisdiction of the Court is invoked under Title 28, United States Code §§ 1331 and 1367.
- C. The jurisdiction of the Court is not disputed.

**III. TRIAL INFORMATION:**

- A. The estimated length of trial is five days.

B. Trial to Jury will begin on January 19, 2005.

**IV. STATEMENT OF THE CASE:**

A. Plaintiff's statement:

Plaintiff claims that Defendant discriminated against him and treated him less favorably than similarly situated American-born employees. Plaintiff claims that Defendant engaged in discriminatory behavior due to his national origin during his employment with the City of Cincinnati. Plaintiff further claims that Defendant retaliated against him for filing charges of discrimination with the EEOC. Plaintiff claims that Defendant violated clear public policies when it subjected him to national origin discrimination and retaliated against him for engaging in protected activities. Plaintiff claims that Defendant lacked an overriding legitimate business justification for its actions.

B. Defendant's Statement:

Defendant claims that there was no unlawful discrimination under either Federal or State law nor any violation of Public Policy.

**V. TRIAL DETERMINATIONS:**

A. FACTS

1. Stipulated Facts:

The parties stipulate to the following facts:

- a. Plaintiff was at all times relevant to this action an employee of the City of Cincinnati, more specifically in MSD.
- b. Plaintiff was hired in 1988 as an Engineer in Training (EIT). Plaintiff is currently employed as a Senior Engineer.
- c. Plaintiff and other EIT's were reclassified as Certified Engineer Technicians (CET-4) in 2000. The reclassification was for allegedly failing to obtain a Professional Engineer's license within ten years. There was no loss of pay as a result of the reclassification. At the time, Plaintiff was in the position as EIT for the longest period. Plaintiff was subsequently transferred to Wastewater Collections, one of six divisions within MSD. Plaintiff alleges that this assignment was based upon his national origin. Defendant denies this allegation.
- d. While employed at MSD, Plaintiff submitted an application for employment as Facility Manager in another City Department. Plaintiff was not selected for the position. The Defendant selected an employee

of that department who had served as "Acting Manager." Plaintiff alleges that his non-selection was based upon his national origin and in retaliation for raising an allegation of discrimination. Defendant denies this allegation.

- e. Plaintiff received a written reprimand in July of 2000 for allegedly not following proper procedures in authorizing additional funds for a Capital Improvement Project. No loss of pay resulted from this reprimand. Plaintiff alleges this action was based upon his national origin and that similarly situated native-born employees were not reprimanded. The Defendant denies this allegation.

2. Disputed Facts:

The parties dispute the following facts and claim that the contested issues of fact remaining for decision are:

- a. Whether Plaintiff's reprimand for allegedly violating city procedure and the City's Municipal Code was based upon his national origin.
- b. Whether Plaintiff was rejected for the position of Facility Manager based upon his national origin and/or in retaliation for engaging in protected activity.
- c. Whether the selection of a native-born employee to fill the position of Supervisor of Manholes was based upon Plaintiff's national origin and/or in retaliation for engaging in protected activity.

**B. Applicable Propositions of Law**

There are no special issues of law other than those implicit in the foregoing issues of fact and those contained in the jury instructions.

**C. Witnesses**

- 1. Plaintiff will call or have available for testimony at trial those witnesses listed in Appendix A hereof.
- 2. Defendant will call or have available for testimony at trial those witnesses listed in Appendix B hereof.
- 3. The parties reserve the right to call with prior overnight notice to opposing counsel rebuttal witnesses whose testimony could not reasonably be anticipated.

**D. Expert Witnesses**

The parties do not intend to call any expert witnesses.

**E. Exhibits**

1. Plaintiff Exhibits, Appendix C, numbers PX 1000 -1035
2. Defendant's Exhibits, Appendix D, numbers DX 2000 - DX2089

The Parties will exchange all exhibits in this action, subject to objections and motions in limine.

**F. Depositions**

Plaintiff will call Sam George by deposition. Defendant may seek to call Patrick Karney and Kevin Shepard by deposition; Plaintiff objects because Defendant did not conduct depositions of Messrs. Karney and Shepard. Defendant reserves the right to object to the use of testimony of Sam George by deposition.

**G. Completion of Discovery**

Discovery has been completed.

**H. Pending Motions**

Defendant's Motion in Limine (Doc. 44) was denied by this Court on January 5, 2005 (Doc. 51). Defendant restates its objections and reserves the right to raise objections at trial regarding the issues in its motion.

**I. Other Actions**

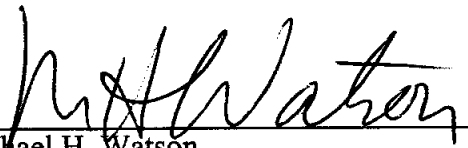
Motions in limine and jury instructions will be filed with the Court in accordance with its orders in this action.

The pretrial order may be modified to prevent manifest injustice, pursuant to Fed. R.Civ. Pro. 16(e)

**J. Instructions and Special Verdict.**

Submission of instructions and supplemental instructions and special verdict forms have been previously exchanged and filed with the Court.

**IT IS SO ORDERED.**

  
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Michael H. Watson  
United States District Judge

/s Kelly Mulloy Myers  
Kelly Mulloy Myers (0065698)  
Randolph H. Freking (0009158)  
Trial Attorneys for Plaintiff  
Freking & Betz  
215 E. Fifth Street, Fifth Floor  
Cincinnati, OH 45202  
(513) 721-1975/FAX: 651-2570

/s Augustine Giglio (per telephone authorization)  
Augustine Giglio (0031911)  
Terry Nestor (0065840)  
Trial Attorney for Defendant  
Assistant City Solicitor  
City Hall, Room 214  
Cincinnati, OH 45202  
(513) 352-3334/FAX: 352-1515

**APPENDIX A**


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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO**
**PLAINTIFF'S WITNESS LIST****ALI BAHAR v. CITY OF CINCINNATI****Case No. C-1-01-798**


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**PRESIDING JUDGE  
MICHAEL WATSON**


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<b>PLAINTIFF'S ATTORNEYS</b>	<b>DEFENDANT'S ATTORNEYS</b>
<b>KELLY MULLOY MYERS</b>	<b>AUGUSTINE GIGLIO</b>
<b>RANDOLPH FREKING</b>	<b>TERRY NESTOR</b>

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**TRIAL DATE(S)  
JANUARY 19, 2005**


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	WITNESS NAME	DESCRIPTION OF EXPECTED TESTIMONY
	Tony Huang	Mr. Huang will testify to matters testified to during his deposition. Mr. Huang will testify as to Plaintiff's work performance and the policies and procedures of MSD. He will also testify as to the discriminatory practices within the MSD.
	Rao Donepudi	Mr. Donepudi will testify to matters testified to during his deposition. Mr. Donepudi will testify as to Plaintiff's character. He will also testify that Defendant wanted to terminate Plaintiff and the discriminatory practices within the MSD.
	Sam George	Mr. George will testify to matters testified to during his deposition. Mr. George will also testify as to Plaintiff's work performance and the policies and procedures within the MSD.
	Tom Quinn	Mr. Quinn will testify to matters testified to during his deposition. Mr. Quinn will testify as to Plaintiff's qualifications and work performance, and the policies and procedures within the MSD.

	WITNESS NAME	DESCRIPTION OF EXPECTED TESTIMONY
	Joe Niehaus	Mr. Niehaus will testify to matters testified to during his deposition. Mr. Niehaus will testify as to Plaintiff's work performance and character and the proper procedures for requesting and implementing change orders.
	Bob Campbell	Mr. Campbell will testify to matters testified to during his deposition. Mr. Campbell will testify as to Plaintiff's qualifications and work performance, the policies and procedures within the MSD and the engineer in training system. Mr. Campbell will also testify about the change order involving Plaintiff, his transfer to wastewater collection and his change in job status.
	Julia Johnson	Plaintiff anticipates that Ms. Johnson will testify to matters testified to during her deposition.
	Ali Bahar	Plaintiff has information concerning all matters at issue in this litigation.
	Laura Bahar	Mrs. Bahar, Plaintiff's wife, will testify regarding the damages and impact of the national origin harassment suffered by Plaintiff.

**APPENDIX B**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO**AMENDED DEFENDANT'S WITNESS LIST**

ALI BAHAR v. CITY OF CINCINNATI

Case No. C-1-01-798

PRESIDING JUDGE  
M. WatsonPLAINTIFF'S ATTORNEYS  
KELLY MULLOY MYERS  
RANDOLPH FREKINGDEFENDANT'S ATTORNEYS  
AUGUSTINE GIGLIO  
TERRENCE NESTOR

TRIAL DATE(S) 1/19/05

	WITNESS NAME	DESCRIPTION OF EXPECTED TESTIMONY
	Robert Campbell, Deputy Director, MSD	Mr. Campbell has information regarding matters at issue in this litigation. Mr. Campbell's testimony will include, but is not limited to the claims of discrimination made by the Plaintiff, his job classifications, performance, MSD procedures and Plaintiff's actions resulting in a written reprimand. Mr. Campbell will also testify as to matters testified in his deposition.
	Patrick Karney, Director, MSD	Mr. Karney has information regarding matters at issue in this litigation. Mr. Karney's testimony will include, but not limited to the claims of discrimination made by the Plaintiff, his job classifications, performance, MSD procedures and Plaintiff's actions resulting in a written reprimand. Mr. Karney will also testify as to matters testified in his deposition.
	Julia Johnson, MSD, HR	Ms. Johnson will address Plaintiff's classification requirements, pay and other benefits received by Plaintiff and Disciplinary and Human Resources procedures within MSD. Ms. Johnson will also testify as to matters testified in his deposition.
	Steve Minges, Supervisor, MSD, Wastewater Collections	Mr. Minges will address the allegations of Plaintiff regarding his assignment to and the nature of operations in Waste Water Collections. Mr. Minges will also testify as to matters testified in his deposition.
	Tom Quinn, Former Director, MSD	Mr. Quinn will address procedures for obtaining additional funds for Projects during his term as Director and obtainment procedures for additional funds on contracts. Mr. Quinn will also testify as to matters testified in his deposition.



	WITNESS NAME	DESCRIPTION OF EXPECTED TESTIMONY
	Kevin Shepard, Former Director, Facility Management	Mr. Shepard will testify as to his decision in selecting to fill the vacant position of Facility's Manager in 2001. Mr. Shepard will also testify as to matters testified in his deposition.
	Jerry Wiemer, Supervisor, Wastewater Collections	As Plaintiff's supervisor, Mr. Wiemer will testify regarding Plaintiff's duties and work as CET-4 at Wastewater Collections. Mr. Wiemer will also testify as to matters testified in his deposition.

	WITNESS NAME	DESCRIPTION OF EXPECTED TESTIMONY
	Ralph Johnstone, Supervisor, Wastewater Collections	As Plaintiff's supervisor, Mr. Johnstone will testify regarding Plaintiff's duties and work as CET-4 at Wastewater Collections. Mr. Johnstone will also testify as to matters testified in his deposition.
	Peter Schneider, Former Supervisor, MSD	Mr. Schneider will testify as to Plaintiff's claims and Defendant's defenses as well as procedures and Plaintiff's activities seeking to establish the Deputy Director as violating such standards. Mr. Schneider will also testify as to matters testified in his deposition.

Defendant reserves the right to call any witnesses listed by Plaintiff.

**APPENDIX C**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO**PLAINTIFF'S EXHIBIT LIST**

ALI BAHAR v. CITY OF CINCINNATI

Case No. C-1-01-798

PRESIDING JUDGE  
MICHAEL WATSONPLAINTIFFS ATTORNEY  
KELLY MULLOY MYERS  
RANDOLPH FREKINGDEFENDANT'S ATTORNEYS  
AUGUSTINE GIGLIO  
TERRY NESTORTRIAL DATE(S)  
JANUARY 19, 2005

<b>Plaintiff No.</b>	<b>Date Offered</b>	<b>Admitted</b>	<b>Exhibit Description</b>
1000			Excerpts from Ali Bahar's Personnel File
1001			Performance Reviews 1989-1999
1002			Honors and Awards 1994-1999
1003			Notice of Official Reprimand - July 10, 2000
1004			Complaint of Discrimination - August 16, 2000
1005			Reassignment Memo - August 18, 2000
1006			Evaluation of Ali Bahar - August 23, 2000
1007			Complaint to John Shirey - August 24, 2000
1008			EEOC Charges
1009			Engineering Technical Supervisor (Manhole Rehabilitation Program) Job Posting
1010			February 9, 2001 Memo regarding Interviews for Manhole Rehabilitation Position
1011			Facility Manager Job Posting
1012			Job Description for Facility Manager Position
1013			Plaintiff's Application for Facility Manager Position

<b>Plaintiff No.</b>	<b>Date Offered</b>	<b>Admitted</b>	<b>Exhibit Description</b>
1015			May 24, 2001 Memo regarding the Exceptional Appointment of C. Rick Schmidt as Facility Manager
1016			Evaluation of Ali Bahar - June 6, 2001
1017			Professional Reference for Ali Bahar
1018			October 3, 2000 e-mail regarding Ali Bahar's Civil Service Commission Appeal
1019			February 7, 2002 e-mail from Julia Johnson regarding Promotion to Senior Engineer
1020			February 7, 2002 e-mail from Pat Karney regarding Ali Bahar passing PE Exam
1021			Evaluation of Ali Bahar - January 22, 2003
1022			Evaluation of Ali Bahar - August 16, 2002
1023			January 4, 1993 memo from A. Samuel George regarding Service of Ali Bahar
1024			Supervising Engineer (Engineering Office) Job Posting
1025			January 24, 2004 letter from John Plahovinsak regarding Supervising Engineer list
1026			June 20, 1994 Supervising Engineer Job Posting
1027			Documents regarding Ali Bahar's Complaint of Discrimination with the City of Cincinnati's EEO
1028			Salary Grades
1029			Organizational Chart
1030			Excerpts of June 24, 2003 Optimization Plan - Draft One
1031			Civil Service Rules
1032			Excerpts of July 31, 2003 Optimization Plan - Draft Two
1033			Excerpts of Cindy Kron's Personnel File
1034			Excerpts of Rick Schmidt's Personnel File

**APPENDIX D****EXHIBITS OF DEFENDANT**

Designation	Description	Identified/Admitted
DX2000	EIT Job Analysis Questionnaire	
DX2001	Salary Grade/Step Schedule (EIT)	
DX2002	8/18/00 Memo to CSC from Julia Johnson	
DX2003	EIT Classification Specifications	
DX2004	CSC Minutes re: Change of EITs	
DX2005	CSC Minutes re: Bahar Appeal	
DX2006	MSD Form 9 re: Personnel Action	
DX2007	CHRIS Job Summary	
DX2008	CSC Rules (R.10, 11, 47, 49, 51, 52)	
DX2009	7/19/88 New Employee Checklist	
DX2010	6/17/88 Memo to J. Johnson	
DX2011	5/18/88 Interview Notes	
DX2012	7/10/00 Notice of Official Reprimand	
DX2013	7/24/00 Bahar Memo	
DX2014	7/25/00 Bahar Memo	

Designation	Description	Identified/Admitted
DX2015	8/22/00 Chapman Memo	
DX2016	8/16/00 Bahar Letter to Reece	
DX2017	8/18/00 Bahar E-mails	
DX2018	8/24/00 Bahar E-mail	
DX2019	Public Records Request (0020-0037)	
DX2020	8/13/99 Karney E-mail	
DX2021	12/12/01 Danepudi E-mail	
DX2022	6/5/00 Memo re: Employees Working Out of Classification	
DX2023	11/2/99 Memo re: MSD Policy	
DX2024	8/01/00Danepudi E-mail	
DX2025	5/03/01 Bahar E-mail	
DX2026	4/23/01 Bahar E-mail	
DX2027	Updated Letter from Bahar to Shirey	
DX2028	4-5-99 Slavin Letter to Bahar	
DX2029	6-16-00 Karney E-mail	
DX2030	1-16-2002 Bahar Letter 0071-0072	
DX2031	8-28-00 Bahar Letter to CSC	

Designation	Description	Identified/Admitted
DX2032	8-24-00 Bahar E-mail	
DX2033	9-7-99 Bahar Memo to Huang	
DX2034	3-25-99 J. Johnson Memo	
DX2035	2-22-93 Nuxoll Memo re: Project Managers(Withdrawn by Def.)	
DX2036	3-23-00 Shirey Memo & Ordinance	
DX2037	4-3-00 Krings Letter to Bahar	
DX2038	1-19-87 Perkins Letter to Bahar	
DX2039	7-15-99 Karney Letter to Roberson	
DX2040	4-27-00 Karney Memo to Shirey	
DX2041	6/97 Non Discrimination Handbook	
DX2042	MSD Career Path FlowSheet	
DX2043	5-24-01 CSC Minutes	
DX2044	3-15-01 CSC Minutes	
DX2045	5-1-01 Bahar Facility Manager Application	
DX2046	5-18-01 Shepard Letter to Bahar	
DX2047	5-24-01 Callahan Memo re: Schmidt	
DX2048	1-26-01 Public Record Request	

Designation	Description	Identified/Admitted
DX2049	2-9-01 Minges Memo to Bahar, Kim, St. John	
DX2050	3-29-00 Bahar Letter to Krings	
DX2051	00871-884 Bahar EEOC Complaint	
DX2052	00924 Bahar EEOC Complaint	
DX2053	Bahar EEOC Affidavit	
DX2054	Bahar EEOC Affidavit re: Retaliation	
DX2055	2-22-01 Bahar E-mail	
DX2056	2-15-01 Karney Letter re: M. Umberg	
DX2057	2-14-01 Karney Letter re: S. Moisio	
DX2058	2-14-01 Karney Letter re: B. George	
DX2059	9-7-00 Bahar E-mail re: Leadership #3	
DX2060	9-06-00 Bahar E-mail to D. Chapman	
DX2061	8-10-99 MSD Reorganization Memo	
DX2062	4-10-00 Campbell E-mail to Niemeyer	
DX2063	8-28-00 Chapman E-mail to Bahar	
DX2064	7-14-00 Bahar Memo to Campbell	
DX2065	7-13-00 Campbell Memo to Bahar	

Designation	Description	Identified/Admitted
DX2066	11-16-99 Bahar Memo to Rahtz	
DX2067	8-14-00 Bahar E-mail to Kesterman	
DX2068	4-17-00 Campbell E-mail to T. Huang	
DX2069	3-24-00 Bahar E-mail to T. Huang 1258-1259	
DX2070	3-15-00 Bahar E-mail to T. Huang 1260-1261	
DX2071	3-15-00 Flanders E-mail to Bahar	
DX2072	3-14-00 Huang E-Mail to Bahar	
DX2073	3-13-00 Huang E-mail to B. Campbell	
DX2074	4-10-00 Corr. R. Cambell to P. Karney	
DX2075	3-20-00 Memo to B. Campbell from WWE	
DX2076	2-7-00 Karney Memo to Bahar	
DX2077	4-20-98 Bahar Corr & Argument to B&V	
DX2078	2-7-02 Bahar Diary ("BD")	
DX2078	3-14-02 Bahar Diary	
DX2079	3-22-02 Bahar Diary	
DX2078	2-27-01 BD	
DX2079	2-28-01 BD	



Designation	Description	Identified/Admitted
DX2080	11-12-99 BD	
DX2081	12-6-99 BD	
DX2082	12-8-97 BD	
DX2083	4-19-96 BD	
DX2084	7-6-00 Campbell E-mail to T. Huang	
DX2085	Project Manager Positing	
DX2086	7-6-00 Campbell E-mail from T. Huang – pg. 1 & 2	
DX2087	3-1-00 Karney E-mail from J. Shirey – pg. 1 & 2	
DX2088	8-9-02 Huang E-mail to P. Karney – pg. 1 & 2	
DX2089	Staff Allocation for USEPA Response – pg. 1 & 2	

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**U.S. District Court**

**Southern District of Ohio**

**Notice of Electronic Filing**

The following transaction was received from Myers, Kelly entered on 1/12/2005 at 5:39 PM EST and filed on 1/12/2005

**Case Name:** Bahar v. Cincinnati City of

**Case Number:** 1:01-cv-798

**Filer:** Ali Bahar

**Document Number:** 55

**Docket Text:**

Proposed Pretrial Order *Joint* by Plaintiff Ali Bahar. (Attachments: # (1) Appendix A - Plaintiff's Witness List# (2) Appendix B - Defendant's Witness List# (3) Appendix C - Plaintiff's Exhibit List# (4) Appendix D - Defendant's Exhibit List)(Myers, Kelly)

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

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**Document description:**Appendix A - Plaintiff's Witness List

**Original filename:**n/a

**Electronic document Stamp:**

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**Document description:**Appendix B - Defendant's Witness List

**Original filename:**n/a

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**Document description:**Appendix C - Plaintiff's Exhibit List

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**Document description:**Appendix D - Defendant's Exhibit List

**Original filename:**n/a

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**1:01-cv-798 Notice will be electronically mailed to:**

Randolph Harry Freking randy@frekingandbetz.com, acarpenter@frekingandbetz.com

Augustine Giglio gus.giglio@cincinnati-oh.gov,

Kelly Mulloy Myers kmyers@frekingandbetz.com, khuber@frekingandbetz.com

Terrance A Nestor terry.nestor@cincinnati-oh.gov,

**1:01-cv-798 Notice will be delivered by other means to:**